

## Testimony Opposing ZTA 22-01

My name is Katherine Katzin. Thank you for giving me the opportunity to speak today. I am opposed to ZTA 22-01.

**There is no FCC or federal requirement, no plausible legal justification, for ZTA 22-01.**

**Nowhere in federal law is it written that 30 foot setbacks are required over 60 foot setbacks.**

- Montgomery County **is not and was not vulnerable to liability for “a lot of money”** if it failed to adopt these ZTAs, as some have claimed. The Supreme Court ruled in 2005 that localities cannot be fined or liable for money damages for failing to deploy a cell tower.<sup>1</sup>
- During the deliberations for ZTA 19-07, the Council inaccurately characterized City of Portland v. FCC<sup>2</sup> with respect to the effective prohibition standard of wireless services.

o Re: Section 332, City of Portland did not address or alter municipalities' rights to determine location of towers. For this section, the Fourth Circuit (whose rulings govern in Maryland) has **defined effective prohibition as a total lack of coverage**, which is not our situation in Montgomery County, where **we already have extensive 4G and 5G coverage** (see Cellco v. Board of Supervisors of Fairfax County<sup>3</sup>).

- A recent case in the Second Circuit, **Extenet v. Flower Hill** found that **effective prohibition under sections 253 and 332 applied only to the ability of a wireless telephone to make phone calls to a landline**. Nothing more. The federal judge wrote: “it is **not** up to the FCC to construe the Act to say something it does **not** say.”<sup>4</sup>

Finally, ZTA 22-01 won't prevent proliferation of new poles. Pepco could install a new pole and then a few weeks later, wireless carriers claim it's an existing structure under 22-01.

Please vote no on ZTA 22-01 and allow the incoming Council to consider zoning changes.

## **References**

1 <https://www.supremecourt.gov/opinions/04pdf/03-1601.pdf>

2 <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/08/12/18-72689.pdf>

3 <https://cite.case.law/f-supp-3d/140/548/>

4 <https://ehtrust.org/wp-content/uploads/Analysis-of-ExteNet-Sys.-v.-Village-of-Flower-Hill-by-Attorney-Robert-Berg-Legal-Advisor-the-Environmental-Health-Trust-2.pdf>